Tej Partap Mamik and anr v. State of Haryana and ors

Mr Rahul Mehra, Advocate for the petitioners.
Mr Ashok Jindal, AAG Haryana.
Mr Rajiv Sharma, Advocate for respondents-2 and 3.

Cr Misc 99455 of 2007

Notice of the application to AG Haryana and respondents-2 and 3.

On the asking of the Court Mr Ashok Jindal, AAG Haryana accepts notice on behalf of respondent-1 – State of Haryana.

Mr Rajiv Sharma, Advocate accepts notice on behalf of respondents-2 and 3.

By way of this application, the head note and prayer clause of the petition are sought to be amended. It is submitted that Annexures P5 and P6 have wrongly been mentioned as Annexures P4 and P5 respectively, and due to typographical mistake, an amended petition has been filed with this misc application. Learned counsel for the respondents have no objection to the taking on record the amended petition and substituting it for the one originally filed.

Accordingly, the misc application is allowed and the amended petition is taken on record and substituted for the one originally filed.

Cr Misc 14917-M of 2007

The petitioners by way of this petition under Section 482 CrPC seek quashing of the private complaint No.47 of 2006 dated 14.2.2006 (Annexure P5) pending in the Court of JMIC Gurgaon and the summoning order dated 3.5.2006 (Annexure P6) in pursuance of which the petitioners

were summoned to stand trial for the offences under Sections 403, 406, 509, 506 and 120-B IPC.

Tej Pratap Mamik (petitioner-1) is a senior citizen aged 67 years. He is a reputed businessman and exporter of high fashion garments. It is stated that he belongs to a very respectable and well-to-do family. He retired from the Indian Air Force as a Wing Commander in 1980. He is leading a retired life. Gaurav Mamik (petitioner-2) is the son of petitioner-1. He is a Graduate in Fashion Production from Fashion Institute of Technology, New York, USA. M/s Fashion Express is a leading export house and proprietorship concern which is owned, managed and run by Mrs Manju Mamik, wife of petitioner-1 and mother of petitioner-2. M/s Fashion Express has about 120 employees who, it is stated, are aided and abetted by "Bhartiya Kamgar Sena" affiliated to Shiv Sena, Mumbai. Some of the employees of the firm who are mischief mongers had filed a complaint dated 8.11.2005 before the Labour-cum-Conciliation Officer, Circle-I, Gurgaon. It was alleged that there had been discrimination in the distribution of Diwali Bonus and other ex-gratia payment to the workers of M/s Fashion Express. The dispute that was made was not covered by the provisions of the Industrial Disputes Act, 1947 and the workers were advised to prefer a general demand notice in terms of Section 2(k) of the said Act. The workers through the Union of "Bhartiya Kamgar Sena" submitted a general demand notice dated 11.7.2006 and also sent 5 copies thereof to the Labour-cum-Conciliation Officer, Circle-I, Gurgaon for necessary action. It is submitted that most of the demands raised by the workers were found untenable and unreasonable and, therefore, were found not actionable. In the aforesaid background, it is alleged that some of the

disgruntled workers filed a false complaint dated 11.11.2005 to the Deputy Commissioner, Gurgaon, to falsely implicate the relatives of the sole proprietor of the firm owner namely Gaurav Mamik (petitioner-2). According to the said complaint, on 10.11.2005 at about 2.00 p.m., some workers including some lady employees had gone to meet the owner of the firm – Gaurav Mamik (petitioner-2) in his office and he allegedly abused and threatened them, besides criminally intimidating them. The Inquiry Officer who enquired into the matter submitted his report saying that no incident of sexual harassment or criminal intimidation had taken place. It was rather found that the aim of the alleged complaint was to harass the owners of the firm due to the discriminatory distribution of bonus regarding which the matter was already under consideration of the Labour Court. On 14.2.2006 a complaint (Annexure P5) was filed which is thumb-marked by Suman (respondent-2) and signed by Beena Devi (respondent-3) who are employees of the firm. In this complaint, a reference has also been made to an earlier complaint dated 8/9.11.2005. However, no reference has been made to the another complaint dated 11.11.2005 addressed to the Deputy Commissioner, Gurgaon wherein also a reference has been made to the incident of 10.11.2005. The complaint dated 11.11.2005, it is stated, is admittedly the first complaint lodged with the authorities about the details of the incident of 10.11.2005. In the said entire complaint, the presence of Tej Pratap Mamik (petitioner-1) is not shown at the time and place of the alleged incident of 10.11.2005 nor any culpability is attributed to him. The allegations are only attributed to Gaurav Mamik (petitioner-2). Therefore, it has been submitted that the learned trial Magistrate erred in passing the summoning order dated 3.5.2006 (Annexure P6).

Notice of motion was issued in this case on 9.3.2007.

It was inter alia contended on behalf of the petitioners that the earlier complaints dated 8.11.2005 (Annexure P1) and 11.11.2005 (Annexure P3), the name of petitioner-1 had not been referred to. In any case, the Police had investigated the matter and found no grain of truth in the allegations made by the complainant. Thereafter, the complaint dated 14.2.2006 (Annexure P5) had been filed in which the allegations had been made against petitioner-1 even, though he had no concern with the proprietorship of M/s Fashion Express. Further proceedings before the trial Court were stayed.

Written statement has been filed by Beena Devi (respondent-2) denying the averments and stated that the petition had been filed merely as a misuse of the process of the Court without making any prayer before the trial Court.

In any case, during the pendency of the petition, the parties have settled their dispute. A compromise deed dated 4.12.2007 (Annexure R1) has been recorded and it is stated that there was some misunderstanding due to the circumstances at that time between the party of the first part i.e. the petitioners and the party of the second part i.e. the complainants (respondents-2 and 3). It is submitted that with the intervention of the respectables, elders and friends and in order to end the bad blood and to live amicably, all the misunderstandings between the parties have been removed. The MOU (Annexure R1) is thumb-marked by Suman Devi and signed by Smt Beena Devi (respondents-2 and 3 respectively). Suman Devi (respondent-2) and Smt Beena Devi (respondent-3) have also deposed affidavits – Annexures R2 and R3 respectively inter alia stating that they

have no objection to the quashing of the complaint – Annexure P5 and the summoning order – Annexure P6. The respondents-2 and 3 are also present in Court and are identified by their counsel who, on instructions from them, has stated that they have no objection to the quashing of the complaint.

The State of Haryana has filed reply of Assistant Commissioner of Police, Udyog Vihar, Gurgaon in which it is stated that the petitioners have approached this Court for quashing of a private complaint and the petition mainly pertains to respondents-2 and 3 and the State had been impleaded as a formal party in the petition.

I have given my thoughtful consideration to the contentions of the respective parties.

The petitioners have been summoned as accused on the basis of a private complaint dated 14.2.2006 (Annexure P5). The complainants (respondents-2 and 3) have stated that they have compromised the matter. The question whether the complaint otherwise was made out or not is debatable in view of the fact that petitioner-1 was not named as an accused in the earlier complaints dated 8.11.2005 (Annexure P1) and 11.11.2005 (Annexure P3). However, this aspect is not necessary to be gone into as the complainants themselves have stated that the complaint was filed due to some misunderstanding. Both the parties have prayed that the impugned complaint (Annexure P5) and the summoning order (Annexure P6) be quashed.

A Full Bench of this Court in ***Kulwinder Singh and ors v. State of Punjab and anr*** 2007(3) RCR (Criminal) 1052 (five Judges) has held that where the parties have entered into a compromise in respect of the offences which are non-compoundable, this Court has the power under

Section 482 CrPC to allow the compounding of non-compoundable offence and quash the proceedings where it is felt that the same was required to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. It was held that the said power of quashing is not confined to matrimonial disputes alone. It was also observed that the compromise in a modern society is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 CrPC is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is finest hour of justice. The power under Section 482 CrPC to quash the FIR is though to be exercised sparingly and with utmost care and caution, however, in the facts and circumstances as have been noticed above, it is evident that the dispute is between the management and the employees of M/s Fashion Express. Therefore, if the dispute is amicably settled between them, it would be beneficial for both and it would reduce friction in their day-to-day working. Therefore, to secure the ends of justice, it would be just and expedient that the impugned complaint (Annexure P5) and the summoning order (Annexure P6) are quashed.

Accordingly, the criminal misc petition is allowed and the impugned complaint dated 14.2.2006 (Annexure P5) and the summoning order (Annexure P6) passed by the learned JMIC Gurgaon and all consequential proceedings arising therefrom shall stand quashed.

10.12.2007. (S.S.SARON)
ASR JUDGE